

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, DC**

**DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY
Complainant**

v.

Complaint No. 2008-02

**ARMISTEAD W. ELLIS, JR.
Respondent**

DECISION BY DEFAULT

On May 12, 2008 a Complaint was issued on behalf of Michael R. Chesman, Director, Office of Professional Responsibility, Internal Revenue Service, Department of the Treasury, pursuant to 31 C.F.R. 1060, issued under the authority of 31 U.S.C. 330, alleging that Respondent Armistead W. Ellis, Jr., an attorney engaged in practice before the Internal Revenue Service, has engaged in disreputable conduct within the meaning of 31 C.F.R. 10.51. The Complainant seeks to have the Respondent disbarred from such practice pursuant to 31 C.F.R. 10.50(a).

The Complaint was served upon the Respondent by sending copies to him by certified mail at his last addresses of record within the Internal Revenue Service on May 12, 2008. The Complaint notified the Respondent that he was required to file and serve an answer to the Complaint no later than 30 days after the date of service. No answer has been filed.

On July 8, 2008, counsel for the Complainant filed a Motion for Decision by Default with the undersigned administrative law judge who has been designated to conduct this proceeding. The motion was served upon the Respondent by mailing copies to his last addresses of record with the Internal Revenue Service on the same date. The Respondent has filed no response to the motion.

Ruling on Motion for Decision by Default

A review of the record herein shows that effective service of the Complaint was made upon the Respondent in accordance with 31 C.F.R. 10.63(a). The Respondent was obliged to file an answer to the Complaint or be subject to having a decision by default entered against him, but he failed to do so. Pursuant to the provisions of 10.64(d), failure to file a timely answer constitutes a

waiver of hearing, the allegations of the complaint are deemed to be admitted, and they may be considered as proved without further evidence.

Inasmuch as the allegations in the complaint have been admitted and no hearing or further proceedings are necessary, based on the record herein, I make the following:

Findings of Fact

1. At all times material, the Respondent, Armistead W. Ellis, Jr. was an attorney engaged in practice before the Internal Revenue Service and was subject to the disciplinary authority of the Secretary of the Treasury and the Office of Professional Responsibility.
2. Respondent was required by 26 U.S.C. Sections 6011, 6012 and 6072 to timely file a Federal income tax return for tax year 1999 on or before April 15, 2000.
3. Respondent failed to timely file a Federal income tax return for tax year 1999. Respondent did not file his Federal income tax return for tax year 1999 until April 15, 2003.
4. Such failure to timely file a Federal income tax return for tax year 1999 was willful and constitutes disreputable conduct pursuant to 31 C.F.R. 10.51 generally and a willful violation of 10.51(d) (Rev. 1994) more particularly, for which Respondent may be censured, suspended or disbarred from practice before the IRS.
5. Respondent was required by 26 U.S.C. 6011, 6012 and 6072 to timely file a Federal Income Tax return for tax year 2000 on or before April 15, 2001.
6. Respondent failed to timely file a Federal income tax return for tax year 2000. Respondent requested an extension and an extension was granted to the Respondent until August 15, 2001. Respondent did not file his Federal income tax return for tax year 2000 until April 17, 2003.
7. Such failure to timely file a Federal income tax return for year 2000 was willful and constitutes disreputable conduct pursuant to 31 C.F.R. 10.51 generally and a willful violation of 10.51(f) (Rev. 1994) more particularly, for which Respondent may be censured, suspended or disbarred from practice before the IRS.
8. Respondent was required by 26 U.S.C. 6011, 6012 and 6072 to file a Federal income tax return for tax year 2001 on or before April 15, 2002.

9. Respondent failed to file a Federal income tax return for tax year 2001. Respondent requested an extension and an extension was granted to Respondent until October 15, 2002.

10. Respondent's failure to file a Federal income tax return for tax year 2001 was willful and constitutes disreputable conduct pursuant to 31 C.F.R. 10.51 generally and a willful violation of 10.51(f) (Rev. 2002) more particularly, for which Respondent may be censured, suspended or disbarred from practice before the IRS.

11. Respondent was required by 26 U.S.C. 6011, 6012 and 6072 to file a Federal income tax return (form 1040) for tax year 2002 on or before April 15, 2003.

12. Respondent failed to file a Federal income tax return for tax year 2002. Respondent requested an extension and an extension was granted until October 15, 2003.

13. Respondent's failure to file a Federal income tax return for tax year 2002 was willful and constitutes disreputable conduct pursuant to 31 C.F.R. 10.51 generally and a willful violation of 10.51(f) (Rev. 2002) more particularly, for which Respondent may be censured, suspended or disbarred from practice before the IRS.

14. Respondent was required by 26 U.S.C. 6011, 6012 and 6072 to timely file a Federal income tax return (Form 1040) for tax year 2005 on or before April 15, 2006.

15. Respondent failed to timely file a Federal income tax return for tax year 2005. Respondent requested an extension and an extension was granted to Respondent until October 15, 2006. Respondent did not file his individual Federal income tax return for tax year 2005 until February 15, 2007.

16. Such failure to timely file a Federal income tax return for tax year 2005 was willful and constitutes disreputable conduct pursuant to 31 C.F.R. 10.51 generally and a willful violation of 10.51(f) (Rev. 2005) more particularly, for which Respondent may be censured, suspended or disbarred from practice before the IRS.

Conclusions of Law

1. The Respondent's failure to timely file his Form 1040 for tax years 1999, 2000, 2001, 2002 and 2005 constitutes disreputable conduct as set forth in 31 C.F.R. 10.51, and reflects adversely on his current fitness to practice, warranting his suspension from practice before the Internal Revenue Service.

2. The Respondent's repeated disreputable conduct and violations of the regulations governing practice before the Internal Revenue Service warrant his suspension from such practice for a period of forty eight months. There is no evidence of any extenuating or mitigating circumstance and the disciplinary action proposed by the Director is reasonable.

3. Reinstatement of the Respondent shall be at the sole discretion of OPR, at a minimum, requiring the Respondent to have filed all Federal income tax returns and paid all outstanding Federal tax liabilities for which he is responsible, or to have entered into an installment agreement or offer of compromise which has been accepted by the Service and with which the Respondent has remained in compliance.

Upon the foregoing findings of fact and conclusions of law, it is

ORDERED that Armistead W. Ellis, Jr. is suspended from practice before the Internal Revenue Service for a period of 48 months.

Dated at Washington, D.C. July 14, 2008

Joel W. Biblowitz
Administrative Law Judge